ELECTION COMMISSION OF INDIA

ASHOKA ROAD,
NEW DELHI-1.
Dated 8th January, 1976.

NOTIFICATION

No. 82/MY-LA/(3/72)/73-Vol. II.—In pursuance of clause (b) of sub-section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 19 December, 1975 of the Supreme Court of India in Civil Appeal No. 1171 (NCE) of 1975 from the Order dated 19th July, 1973, of the High Court of Mysore at Bangalore, in Election Petition No. 3 of 1972.

By Order,

V. NAGASUBRAMANIAN,
Secretary to the Election Commission of India.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1171 *of* 1975

C. M. Arumugam .. *Appellant.*

vs.

S. Rajgopal and Urs .. *Respondents.*

JUDGEMENT

Bhagwati J.,

This appeal under Section 116-A of the Representation of People Act, 1951 is directed against an order made by the High

Court of Mysore setting aside the election of the appellant on the ground that the nomination paper of the 1st respondent was improperly rejected by the Returning Officer. This litigation does not stand in isolation. It has a history and that is necessary to be noticed in order to appreciate the arguments which have been advanced on behalf of both parties in the appeal.

The appellant and the 1st respondent have been opponents in the electoral battle since a long time. The constituency from which they have been standing as candidates is 68 KCF Constituency for election to the Mysore Legislative Assembly. They opposed each other as candidates from this constituency in 1967 General Election to the Mysore Legislative Assembly. Now, the seat from this constituency was a seat reserved for Scheduled Castes and therefore, only members of Scheduled castes could stand as candidates from this constituency. The expression "Scheduled Castes" has a technical meaning given to it by cl. (24) of Art. 366 of the Constitution and it means "such castes, races or tribes or parts of or groups within such castes or tribes as are deemed under Art. 341 to be Scheduled Castes for the purpose of the Constitution." The President, in exercise of the power conferred upon him under Art. 341 issued the Constitution (Scheduled Castes) Order, 1950. Paragraphs 2 and 3 of this Order are material and, since the amendment made by Central Act 63 of 1956, they are in the following terms:

"2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within caste or tribes specified in Part I to XIII of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them in those parts of that schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or

the Sikh religion shall be deemed to be a member of a Scheduled Caste."

The Schedule to this Order in Part VIII sets out "the castes, races or tribes of parts of or groups within castes or tribes" which shall in the different areas of the State of Mysore be deemed to be Ccheduled Castes. We are concerned with cl. (1) of Part VIII as the area of 68 KGF Constituency is covered by that clause. One of the castes specified there is Adi Dravida and that caste must, therefore, for the purpose of election from 68 KGF Constituency, be deemed to be a Scheduled Caste. The appellant was admittedly, at the date when he filed his nomination paper for the 1967 election from 68 KGF Constituency, an Adi Dravida Professing Hindu religion and was consequently qualified to stand as a candidate for the reserved seat from this constituency. The 1st respondent also claimed to be an Adi Dravida professing Hindu religion and on this basis, filed his nomination from the same constituency. The appellant and the 1st respondent were thus rival candidates—in fact they were the only two contesting candidates—and in a straight contest, the 1st respondent defeated the appellant and was declared elected.

The appellant thereupon filed election petition No. 4 of 1967 in the Mysore High Court challenging the election of the 1st respondent on the ground that the 1st respondent was not an Adi Dravida professing Hindu religion at the date when he filed his nomination and was, therefore, not qualified to stand as a candidate for the reserved seat from 68 KGF Constituency. The Mysore High Court. by an order dated 30th August, 1967. held that the 1st respondent was converted to Christianity in 1949 and on such conversion, he ceased to be an Adi Dravida and, therefore, at the material date, he could not be said to be a member of a Scheduled Caste, nor did he profess Hindu religion, and he was consequently not eligible for being chosen as a candidate for election from a reserved constituency. The 1st respondent being aggrieved by the order setting aside his election, preferred C.A. No. 1553 of 1967 to this Court under

Section 116A of the Representation of People Act, 1951. This Court addressed itself to four questions, namely, first, whether the 1st respondent had become a convert to Christianity in 1949; secondly, whether, on such conversion, he ceased to be a member of Adi Dravida caste; thirdly, whether he had reverted to Hinduism and started professing Hindu religion at the date of filing his nomination, and lastly, whether on again professing the Hindu religion, he once again become member of Adi Dravida caste. So far as the first question was concerned, this Court, on a consideration of the evidence, held that the 1st respondent was converted to Christianity in 1949 and in regard to the second question, this Court observed that it must be held that when the 1st respondent embraced Christianity in 1949, he ceased to belong to Adi Dravida Caste. This Court then proceeded to consider the third question and held that having regard to the seven circumstances enumerated in the judgment, it was clear that at the relevant time in 1967, that is, in January—February 1967, The 1st respondent was professing Hindu religion. That led to a consideration of the last question as to the effect of reconversion of the Ist respondent to Hinduism. This Court referred to a number of decisions of various High Courts which laid down the principle that "on re-conversion to Hinduism, a person can become a member of the same caste in which he was born and to which he belonged before having been converted to another religion", and pointed out that the main basis on which these decisions proceeded was that "If the members of the caste accept the reconversion of a person as member, it should be held that he does become a member of that caste, even though he may have lost membership of that caste on conversion to another religion". This Court, however, did not consider it necessary to express any opinion on the correctness of these decisions, as it found that even if the principle enunciated in these decisions was valid, the 1st respondent did not give evidence to satisfy the requirements laid down by this principle and "failed to establish that he became a member of the Adi Dravida Hindu caste after he started professing the Hindu religion". This court observed that "whether the membership of a caste can be acquired by conversion to Hinduism or after reconversion to Hinduism is a question on which we have refrained from express-

ing our opinion, because on the assumption that it can be acquired, we have arrived at the conclusion that the appellant", that is, the Ist respondent in the present case, "must fail in this appeal". This Court accordingly upheld the decision of the High Court and dismissed the appeal. (1)

This decission was given by a Bench consisting of two judges on 3rd May, 1968. In the three or four years that following certain events happened to which we shall refer a little later. Suffice it to state for the present that, according to the Ist respondent, these events showed that the members of the Adi Dravida caste accepted him as a member and regarded him as belonging to their fold. The next General Election to the Mysore Legislative Assembly took place in 1972. There was again a contest from 68 KGF Constituency which was reserved for candidates from Scheduled Castes. The appellant filed his nomination as a candidate from this constituency and so did the Ist respondent. The nomination of the Ist respondent was, however, objected by the appellant on the ground that the Ist respondent was not an Adi Dravida professing Hindu religion at the date of filling his nomination and he was, therefore, not qualified to stand as a candidate for the reserved seat from this constituency. The Ist respondent rejoined by saying that he was never converted to Christianity and that in any event, even if it was held that he had become a Christian, he was reconverted to Hinduism since long and was accepted by the members of the Adi Dravida caste as belonging to their fold and was, therefore, an Adi Dravida Professing Hindu religion at the material date and hence qualified to stand as a candidate.

The Returning Officer, by an Order dated 9th February, 1972, upheld the objection of the appellant and taking the view that, on conversion to Christianity, the Ist respondent ceased to be an Adi Dravida and thereafter on reconversion, he could not claim the benefit of the Constitution (Scheduled Castes) Order, 1950, the Returnng Officer rejected the nomination of the

(1) S. Rajagopal v. C. M. Arumugam [1969] 1 S.C.R. 254

Ist respondent. The election thereafter took place without the Ist respondent as a candidate and the appellant, having obtained the highest number of votes, was declared elected.

The Ist respondent filed Election Petition No. 3 of 1972 in the High Court of Mysore Challenging the election of the appellant on the ground that the nomination of the Ist respondent was improperly rejected. This was a ground under Secton 100 (1) (c) of the Act and if well founded, it would be sufficient, without more, to invalidate the election. The point which was, therefore, seriously debated before the High Court was whether the nomination of the Ist respondent was improperly rejected and that in its turn depended on the answer to the question whether the Ist respondent was an Adi Dravida professing Hindu religion at the date of filing his nomination. There were four aspects bearing on this question which arose for consideration and they were broadly the same as in the earlier case (*supra*), namely whether the Ist respondent embraced Christianity in 1949 whether on his conversion to Christianity he ceased to belong to Adi Dravida caste, whether he was reconverted to Hinduism and whether on such reconversion, he was accepted by the members of the Adi Dravida caste as belonging to their fold. So far as the first three aspects were concerned, the High Court took the view that they must be taken to be concluded by the decision of this Court in the earlier case (*supra*) and the discussion of the question must, therefore, proceed on the established premise that the Ist respondent was born an Adi Dravida Hindu, he was converted to Christianity in 1949 and on such conversion he lost his capacity as an Adi Dravida Hindu and at least by the year 1967, he had once again started professing Hindu religion. *Vis-a-vis* the fourth aspect, the High Court observed; "It is settled law that reconversion to Hinduism does not require any formal ceremony or rituals or expiatory ceremonies. that a reconvert to Hinduism can revert to his original Hindu caste on acceptance by the members of that caste and that the quantum and degree of proof of acceptance depends on the facts and circumstances of each case, according to the established customs prevalent in a particular locality amongst the caste there"; and on this view of the law the High Court proceeded

to examine the evidence laid on behalf of the parties and pointed out that this evidence established twelve important circumstances subsequent to January-February 1967 which clearly showed that the Ist respondent was accepted into their fold by the members of the Adi Dravida caste and he was, therefore, at the material time, an Adi Dravida professing Hindu religion as required by Paragraphs 2 and 3 of the Constitution (Scheduled Caste) Order, 1950. The High Court, in this view, held that the nomination of the Ist respondent was improperly rejected by the Returning Officer and that invalidated the election under Section 100(1) (c) of the Act. The High Court accordingly set aside the election of the appellant and declared it to be void. This judgement of the High Court is impugned in the present appeal under Section 116A of the Act.

Now before we deal with the contentions urged on behalf of the appellant in support of the appeal, it would be convenient first to refer to two grounds which were held by the High Court against the Ist respondent. The Ist respondent contended that these two grounds were wrongly decided against him and even on these two grounds, he was entitled to claim that, at the material time, he was an Adi Dravda professing Hindu religion. The first ground was that he was never converted to Christianity and the second was, that, on such conversion, he did not cease to be an Adi Dravida. The appellant disputed the claim of the Ist respondent to agitate these two grounds in the appeal before us. The reason given was that the Ist respondent had not pressed them in the course of the arguments before the High Court and had conceded that, in view of the judgment of this Court in the earlier case, Issue No. 3, which raised the question; "Whether the petitioner having abandoned Hinduism and embraced Christianity in the year 1949 had lost the membership of the Adi Dravida Hindu caste and incurred the disqualification under paragraph 3 of the Constitution (Scheduled Castes) Order, 1950" and "Is this issue concluded against the petitioner by virtue of the judgment of the High Court in Civil Appeal 1553 of 1967" did not survive for consideration. There can be no doubt that so far as the first of these

two grounds is concerned, there is force in the objection raised on behalf of the appellant.

The question whether the Ist respondent abandoned Hinduism and embraced Christianity in 1949 is essentially a question of fact and if. at the stage of the arguments before the High Court, the Ist respondent conceded that, iin view of the decision of this Court in the earlier case, this question did not survive for consideration and the High Court, acting on the concession of the Ist respondent, refrained from examining the question on merits and proceeded on the basis that it stood concluded by the decision of this Court in the earlier case how could the Ist respondent be now permitted to reagitate this question at the hearing of the appeal before this Court ?.

The Ist respondent must be held bound by the concession made by him on a question of fact before the High Court. We cannot, therefore; permit the Ist respondent to raise an argument that the evidence on record does not establish that he embraced Christianity in 1949. We must proceed on the basis that he was converted to Christianity in that year.

The position is, however, different when we turn to the question whether, on conversion to Christianity, the Ist respondent ceased to be a member of the Adi Dravida caste. That question is a mixed question of law and fact and we do not think that a concession made by the Ist respondent on such a question at the stage of argument before the High Court can preclude him from reagitating it in the appeal before this court, when it formed the subject-matter of an issue before the High Court and full and complete evidence in regard to such issue was led by both parties. It is true that this Court held in the earlier case that, on embracing Christianity in 1949, the Ist respondent ceased to be a member of the Adi Dravida caste, but this decision given in a case relating to 1967 General Election on the basis of the evidence led in that case, cannot be *res judicata* in the present case which relates to 1972 General Election and where fresh evidence has been adduced on behalf of the parties,

and more so, when all the parties in the present case are not the same as those in the earlier case. It is, therefore competent to us to consider whether, on the evidence on record in the present case, it can be said to have been established that, on conversion to Christianity in 1949, the Ist respondent ceased to belong to Adi Dravida Caste.

It is a matter of common knowledge that the institution of caste is a peculiarly Indian institution. There is considerable controversy amongst scholars as to how the caste system originated in this country. It is not necessary for the purpose of this appeal to go into this highly debatable question. It is sufficient to state that orginally there were only four main castes, but gradually castes and sub-castes multiplied as the social fabric expanded with the absorption of different groups of people belonging to various cults and professing different religious faiths. The caste system in its early stages was quite elastic but in course of time it gradually hardened into a rigid framework based upon heredity. Inevitably it gave rise to gradation which resulted in social inequality and put a premium on anobbery. The caste system tended to develop, as it were, group snobbery, one caste looking down upon another. Thus there came into being social hierarchy and startification resulting in perpetration of social and economic injustice by the so called higher castes on the lower castes. It was for this reason that it was thought necessary by the constitution makers to accord favoured treatment to the lower castes who were at the bottom of the scale of social values and who were afflicated by social and economic disabilities and the Constitution makers accordingly provided that the President may specify the castes and these would obviously be the lower castes which had suffered centuries of appsession and explotation—which shall be deemed to be Scheduled Castes and laid down the principle that seats should be reserved in the Legislature for the Scheduled Castes as it was believed and rightly, that the higher castes would not properly represent the interest of these lower castes.

But that immediately raised the question : what is a caste ? when we speak of a caste, we do not mean to refer in this context

to the four primary castes, but to the multiplicity of castes and sub-castes which disfigure the Indian social scene. "A caste", as pointed out by the High Court of Madras in *Cooppoosami Chetty* v. *Duraisami Chetty*, (2) "is a voluntary association of person for certain purposes". It is a well defined yet fluctuating group of persons governed by their own rules and regulations for certain internal purposes. Sir H. Risley has shown in his book on people of India how castes are formed based not only on community of religion, but also on community of functions. It is also pointed out by Sankaran Nair, 3., in *Muthusami* v. *Masilamani* (3) "..... a change in the occupation sometimes creates a new caste. a Common occupation sometimes combines members of different castes into a distinct body which becomes a new caste. Migration to another place makes a sometimes a new caste". Caste is more a social combination than a religious group. But since, as pointed out by Rajamannar, C.3., in *G. Michael* v. *S. Venkateswaran* (4), ethics provides the standard for social life and it is founded ultimately on religious beliefs and doctrines, religion is inevitably mixed up with social conduct and that is why caste has become an integral feature of Hindu society. But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion. It is no doubt true, and there we agree with the Madras High Court in *G. Michael's* case (*supra*) that the general rule is that conversion operates as an expulsion from the caste, or, in other words, the convert ceases to have any caste, because, caste is predominantly a feature of Hindu society and ordinarily a person who ceases to be a Hindu would not be regarded by the other members of the caste as belonging to their fold. But ultimately it must depend on the structure of the caste and its rules and regulations whether a person would cease to belong to the

(2) I. L. R. 38 Mad. 67
(3) I.L.R. 33 Mad. 342.
(4) I.L.R. 33 Mad. 67

caste on his abjuring Hinduism. If the structure of the caste is such that its members must necessarily belong to Hindu religion, a member, who ceases to be a Hindu, would go out of the caste, because no non-Hindu can be in the state according to its rules and regulations. Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu religion but also person professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persins professing such other religion can be members of the caste. This might happen where caste is based on economic or occupational characteristics and not on religious identity or the cohesion of the caste as a social group is so strong that conversion into another religion does not operate to snap the bond between the convert and the social group. This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste. When an argument was advanced before the Madras High Court in *G. Mehael's* case (*supra*) "that there wese several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself a still being a member of the caste, but has also been considered so by other members of the caste who had not been converted, "Rajamannar, C.3., who, it can safely be presumed, was familiar with the customs and practices prevalent in South India, accepted the position "that instances can be found in which in spite of conversion the caste distinctions might continue", though he treated them as exceptions to the general rule.

The High Court in Andhra Pradesh also affirmed in *Kothapalli Narasayya* v. *Jammane Jogi* that "notwithstanding conversion, the converts whether an individual or family or group of converts, may like to be governed by the law by which they were governed before they became converts ..... and the community to which they originally belonged may also continue to accept them within their fold notwithstanding conversion", and proceeded to add :

"While tendency to divide into sects and division to form new sects with their own religion and social observances is a charactrstic feature of Hinduism .... It should .... be remembered that sects were formed not only on Community of religion but also community of functions. Castism which has taken deep roots in Hinduism for some reason or other may not therefore cease its existance even after conversion. May be that the religion or faith to which conversion takes place, on grounds of policy or otherwise, does not take exception to this social order which does not interfere with its spiritual or theological aspect which is the main object of the religion. That is why we find several members of lower castes converted to Christianity in Madras State .... still continue to be members of their castes .... Thus a conversion does not necessarily result in extinguishment of caste and notwithstanding conversion, a convert may enjoy the privileges social and political by virtue of his being a member of the community with its acceptance."

The selected candidate in this case was held to continue to belong to the Mala Andhra Caste which was a Scheduled Caste, despite his conversion to Christianity. It was again reiterated by the High Court of Andhra Pradesh in a subsequent decision reported in *K. Narasimha Reddy* v. *G. Bhupathi* that survival of caste after conversion to Christianity is not an unfamiliar phenomenon in this part of the country and it was held that even after his conversion to Christianity, the elected candidate, who belonged to Bindla Caste, specified as a Scheduled Caste, continued to retain his caste. since he never abjured his caste nor did his caste people costracize or excommunicate him. The caste system is indeed so deeply ingrained in the Indian mind that, as pointed out by this court in Ganpat v. Returning Officer (7) "for a person who has grown up in Indian society, it is very difficult to get out of the coils of the caste system" and, therefore, even conversion to another religion like Christianity, has in some cases so impact in the membership of the

(5) 30 E.L.R. 199
(6) 31 E.L.R. 211
(7) (1975) S.C.C. 589

caste and the other members continue to regard the convert as still being a member of the caste. This Court pointed out in Ganapat's case (*supra*) that "to this day one sees matrimonial advertisements which want a vellala Christian bride or Nadar Christian bride" which shows that Vellala and Nadar castes comprise both Hindus and Christians.

It seems that the correct test for determining this question is the one pointed out by this Court in Chatturbuj Vithaldas Jasani v. Moreshwar Prasaharam (8) Bose, J., speaking on behalf of the Court in this case pointed out that when a question arises whether conversion operates as a break away from the caste "what we have to determine are the social and political consequences of such conversion and that, we feel, must be decided in a common sense practical way rather that on theoretical and therocratic grounds". The learned Judge then proceeded to add:

"Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or ex-communicate the convert and the individual himself desires and intends to retain his old social political ties, the conversion is only nominal for all practical purpose and when we have to consider the legal and political rights of the old body, the views of the new faith hardly matter."

What is, therefore, material to consider is how the caste looks at the question of conversion. Does it outcaste or ex-communicate the cinvert or does it still treat him as continuing within its fold despite his conversion If the convert desires and intends to continue as a member of the caste and the caste also continues to treat him as a member, notwithstanding his conversion, he would continue to be a member of the caste, and as pointed out by this Court "the views of the new faith hardly

(8) 1954 S.C.R. 817

matter". This was the principle on which it was decided by the Court in *Chatturbhuj Vittaldas Jasani's* case (*supra*) that Gangaram Thaware, whose nomination as a Scheduled Caste candidate was rejected by the Returning Officer, continued to be a Mahar which was specified as a Scheduled Caste, despite his conversion to the Mahanubhav faith.

Paragraphs 2 and 3 of the Constitution (Scheduled Castes) Order, 1950 also support the view that even after conversion, a person may continue to belong to a caste which has been specified in the Schedule to that order as a Scheduled Caste. Paragraph 2 provides that the castes specified in the Schedule to the order shall be deemed to be Scheduled Castes but Paragraph 3 declares that, notwithstanding anything contained in Paragraph 2 that is, notwithstanding that a person belongs to the caste specified as a Scheduled Caste, he shall not be deemed to be a member of the Scheduled Caste, if he profess a religion different from Hindu or Sikh religion. Paragraphs 2 and 3 read together thus clearly recognise that there may be castes specified as Scheduled castes which comprise persons belonging to a religion different from Hindu or Sikh religion and if that be so, it must follow a *fortiori*, that in such castes, conversion of a person from Hinduism cannot have the effect of putting him out of the caste, though by reason of paragraph 3 he would be deemed not to be a member of a Scheduled Caste.

It cannot, therefore, be laid down as an absolute rule uniformly applicable in all cases that whenever a member of a caste is converted from Hinduism to Christianity, he loses his membership of the caste. It is true that ordinarly on conversion to Christianity, he would cease to be a member of the caste, but that is not an invariable rule. It would depend on the structure of the caste and its rules and regulations. There are castes, particulary in South India, where this consequence does not follow on conversion. Since such castes comprise both Hindus and christians. Whether Adi Dravida is a caste which falls within this category or not is a question which would have to be determined on the evidence in this case. There is on the record evidence of Kakkan (PW 18), J. C. Adimoolam (RW 1) and

K. P. Arumugam (RW 8), the last two being witnesses examined on behalf of the appellant which shows that amongst Adi Dravidas, there are both Hindus and Christians and there are inter-marriages between them. It would, therefore, *prima facie* seem that on conversion to Christinnity, the 1st respondent did not cease to belong to Adi Dravida caste. But in the view we are taking as regards that last contention, we do not think it the 1st respondent was reconverted to Hinduism and therefore, necessary to express any final opinion on this point.

The third question in controversy between the parties was whether the 1st respondent was reconverted to Hinduism. This question stands concluded by the decision of this Court in the earlier case and it must be held, for the reasons set out in that decision, that at any rate since prior to January-February 1967. the 1st respondent was reconverted to Hinduism and therefose, at the material time, he was professing the Hindu religion, so as to satisfy the requirement of Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950.

The last contention, which formed the subject matter of controversy between the parties raised the issue whether on reconversion to Hinduism, the 1st respondent could once again become a member of the Adi Dravida caste, assuming that he ceased to be such on conversion to Christianity. The renounced of the appellant was that once the 1st respondent renounced Hinduism and embraced Christianity, he could not go back to the Adi Dravida caste on re-conversion to Hinduism. He undoubtedly became a Hindu, but he could no longer claim to be a member of the Adi-Dravida caste. This argument is not sound on principle and it is also runs counter to a long line of decided cases.

Ganapathi Iyer, a distinguished scholar and jurist, pointed out as far back as 1915 in his well known treatise on 'Hindu Law':

"....caste is a social combination, the members of which are enlisted by birth and not by enrolement, people do not join

castes or religious fraternities as a matter of choice (in one respect); they belong to them as a matter of necessity, they are born in their respective castes or sects. It cannot be said *however, that membership by a caste is determined only by only by birth and not-by anything else*" (emphasis supplied)

Chandravarkar, J., observed in *Nathu* v. *Keshwaji* (9): "It is within the power of a caste to admit into its fold men not born in it as it is within the power of a club to admit any one it likes as its member. To hold that the membership of a caste is determined by birth is to hold that the caste cannot, if it likes, mix with another caste and form both into one caste. That would be striking at the very root of caste autonomy." Sankaran Nair, J., made observations to the same effect in Muthusawam's case (supra) and encluded by saying : It is, of course, open to a community *to admit any person and* marriage performed between him and any member would in my opinion, be valid". Ganapathi Iyer, after referring to these two dicisions, proceeded to add: "Of course it is open to a person to change his caste by entering another caste if such latter caste will admit him—in this sense there is nothing to prevant a person from giving up his caste or community justs and the caste may re-admit an expelled person or an outcasted person if he confirms to the caste observances". Since a caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provided, admit a new member just as it may expell an existing member. The rules and regulations of the caste may not have been formalised: they may not exist in black and white; they may consist only of practices and usages. If according to the practices and usages if the caste any particular ceremonies are required to be performed for readmission to the case, a reconvert to Hinduism would have to perform those ceremonies if he seeks readmission to the caste. That is why Parker, J ;, dealing with the possible readmission of a reconvert to Brahminism observed in *Administrator-General of Maddras* V. *Anandchari* (10):

(9) I.L.R. 26 Bom. 1974
(10) I.L.R. 9 Mad. 500

"His conversion to Christianity according to the Hindu law. rendered him an outcaste and degraded. But according to that law, the degradation might have been atoned for, and the convert readmitted to his status as Brahmin had he at any time during his life renounced Christianity and performed the rites of explanation enjoyed by his caste".

The rites of explanation were referred to by the learned judge because they were enjoyed by the Brahmin caste to which the reconvert wated to be readmitted. But if no rites or ceremonies are required to be performed for readmission of a person concerned as a member of the caste, the only thing necessary for readmission would be the acceptance of the person concerned by the other members of the caste. This was pointed out by *Varadachariar, J. In Gurusami Nadar* V. *Irulappa Konar* (11) where after referring to the aforesaid passage from Administrator General of Madras-Anandachari (*supra*), the learned Judge said :

"The language used in 9 Mad 466 merely refer to the expiatory ceremonies enjoined by the practice of the community in question; and with reference to the class of people we are now concerned with no suggestion as anywhere been made in the course of the evidence that any particular expiatory reremonies are observed amongst them.No particular ceremonise are prescribed for them by the Smriti writers nor have they got to perform any Homas.' One has therefore only to look at the sense of the Community and from that point of view it is of particular significance that the community was prepared to receive Vedanayaga and defendant 5 as man and wife and their issue as legitimate ".

The observations of varadachariar, J., were approved by *Mockett, J., in Durgaprasada Rao* v. *Sudarasanaswami* (12) and he pointed out that in the case before him, there was no evidence of the existence of any ceremonial in Veda Baligi fisherman

(11) A.I.R. 1934 Mad. 630
(12) A.I.R. 1940 Mad. 513

community of Gopalpur for readmission to that community. Krishnaswamy Ayyangar, J., also observed in the same case that "in matters affecting the well being or composition of a caste, the caste itself is the supreme judge". (emphasis supplied The same view has also been taken in a number of decisions of the Andhra Pradesh and Madras High Courts in election petitions arising out of 1967 General Election. These decisions have been set out in the judgment of this Court in *Rajagopal* v. *C. M. Arumugum* (*supra*).

These cases show that the consistent view taken in this country from the time Administrator-General of Madras v. Anandachari (*supra*) was decided, that is since 1886, has been that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. There is no reason either on principle or on authority which should compel us to a disregard this view which has prevailed for almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be re-converted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold. It is the othodox Hindu society still dominated to a large extent, particularly in rural areas, by mediavelistic outlook and status oriented approach which attaches social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favoured treatment is given to him by the Constitution. Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a Scheduled Caste. But when he is reconverted to Hinduism, the social and ecnomic disabilities once again revive and

become attached to him because these are disabilities inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognised as anything but a Mahar or a Koli or a Mala after re-conversion to Hinduism and he would suffer from the same social and economic disabilities from which he suffered before he was converted to another religion. It is, therefore, obvious that the object and purpose of the Constitution (Scheduled Caste Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion. We accordingly agree with the view taken by the High Court that on reconversion to Hinduism the 1st respondent could once again revert to his original Adi Dravida caste if he was accepted as such by the other members of the caste.

That takes us to the question whether in fact the 1st respondent was accepted as a member of the Adi Dravida caste after his reconversion to Hinduism. This Court in the earlier decision between the parties found that the 1st respondent had not produced evidence to show that after his reconversion to Hinduism, any step had been taken by the members of the Adi-Dravida caste indicating that he was being accepted as a member of that caste. The 1st respondent, therefore, in the present case, led considerable oral as well as documentary evidence tending to show that subsequent to January-February, 1967, the 1st respondent had been accepted as a member of the Adi-Dravida caste. The High Court referred to twelve circumstances appearing from the evidence and held on the basis of these twelve circumstances, that the Adi Dravida caste had accepted the 1st respondent as its member and he accordingly belonged to the Adi Dravida caste at the material time. Now, out of these twelve circumstance, we do not attach any importance to the first circumstance which refers to the celebrations of the marriages of his younger brothers Govindaraj and Manickam by the 1st respondent in the Adi Dravida manner, because it is quite natural that if Govindaraj and Manickam were Adi-Dravida Hundus, their marriages would be celebrated according to Adi-Dravida

rites and merely because the 1st respondent, as their elder brother celebrated their marriages, it would not follow that he was also an Adi Dravida Hindu. The Second circumstance that the 1st respondent was looked upon as a peace-maker among the Adi Dravida Hindus of K.G.F. cannot also be regarded as of much significance, because, if the 1st respondent was a recognised leader, it s quite possible that the Adi-Dravida Hindus of K.G.F. might go to him for resolution of their disputes, even though he himself might not be an Adi Dravida Hindu. But the third, fourth and fifth circumstances are of importance, because unless the 1st respondent was recognised and accepted as an Adi Dravida Hindu, he would not have been invited to lay the foundation stone for the construction of the new wall of the temple at Jambakullam, which was essentially a temple of Adi Dravida Hindus, nor would have been requested to participate in the Margazhi Thiruppavai celebration at the Kannabhiran Temple situated at III Line, Kennedy Block, K.G.F. which was also a temple essentially maintained by the Adi-Dravida Hindus and equally, he would not have been invited to preside at the Adi Krittikai festival at Mariamman Temple in I. Post office Block, Marikuppam, K.G.F. where the devotees are Adi Dravidas or to start the procession of the Deity at such festival. These three circumstances are strongly indicative of the fact that the 1st respondent was accepted and treated as a member by the Adi Dravida community. So also does the sixth circumstance that the 1st respondent was a member of the Executive Committee of the Scheduled Caste Cell in the organisation of the Ruling Congress indicate in the same direction. The seventh and eighth circumstances are again of a neutral character. The funeral ceremonies and obsequies of the father of the 1st respondent would naturally be performed according to the Adi Dravida Hindu rites if he was an Adi Dravida Hindu and that would not mean that the 1st respondent was also an Adi Dravida Hindu. Similarly, the fact that the 1st respondent participated in the first annual ceremonies of the late M. A. Vadivelu would not indicate that the 1st respondent was also an Adi Dravida Hindu like the late M. A. Vadivelu. But the ninth circumstance is again very important. It is significant that the

children of the 1st respondent were registered in the school as Adi Dravida Hindus and even the appellant himself issued a certificate stating that R. Kumar, the son of the 1st respondent, was a Scheduled Caste Adi Dravida Hindu. The tenth circumstance that the first respondent participated in the All India Scheduled Castes Conference at New Delhi in 30th and 31st August, 1968 may not be regarded as of any particular importance. It would merely indicate his intention and desire to regard himself as a member of the Adi Dravida Caste. The eleventh circumstance is, however, of some importance. because it shows that throughout the 1st respondent was treated as a member of the Adi Dravida Caste and he was never disowned by the members of that caste. They alwafs regarded him as an Adi Dravida belonging to their fold. But the most important of all these circumstances is the twelfth, namely, the Scheduled Caste Conference held at Skating Ring. Nundydurg Mine K.G.F. on 11th August, 1968. The High Court has discussed the evidence in regard to this conference in some detail. We have carefully gone through the evidence of the witnesses on this point, but we do not find anything wrong in the appreciation of their evidence by the High Court. We are particulary impressed by the evidence of Kakkan (PW 13). The cross-examination of J. C. Adimoolam (RW 1) is also quite revealing. We find ourselves completely in agreement with the view taken by the High Court that this conferrence, attended largely by Adi Dravida Hindus, was held on 11th August, 1968 *inter alia* with the object of readmitting the 1st respondent into the fold of Adi Dravida caste and not only was a purificatory ceremony performed on the 1st respondent at this conference with a view to clearing the doubt which had been cast on his membership of the Adi Dravida caste by the decision of this Court in the earlier case but an address Ex. P-56 was also presented to the 1st respondent felicitating him on this occasion.

It is clear from these circumstances, which have been discussed and accepted by us, that after his reconversion to Hinduism, the 1st respondent was recognised and accepted as a member of that community. The High Court was, therefore, right in coming to the conclusion that at the material time the

1st respondent belonged o the Adi Dravida Caste. So as to fall within the category of Scheduled castes under Paragraph 2 of the Constitution (Scheduled Castes) Order, 1950.

In the result the appeal fails and is dismissed with costs.

(Sd.) .....J.
(Y. U. Chandrachud)

(Sd.) .....J.
(P. N. Bhagwati)

Dated, New Delhi,
December 19, 1975.

(Sd.) .....J.
(R. S. Sarkaria)

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